

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, AHMEDABAD**

सर्वश्री राजपाल यादव न्यायिक सदस्य एवं वसीम अहमद, लेखा सदस्य, के समक्ष।  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.141/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2012-13)

Gupta Arvind Lakhanlal, B3, Tapan Tenament, Gulab Tower Rd, Thaltej, Ahmedabad – 380 054	<b>बनाम/ Vs.</b>	DCIT, Circle – 5(1)(5), Ahmedabad.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEQPG 4793 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Gupta Arvind Lakhanlal
प्रत्यर्थी की ओर से/Respondent by :	Shri Saurabh Singh, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	30/05/2018
घोषणा की तारीख /Date of Pronouncement	31/05/2018

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the assessee against the appellate order of the Commissioner of Income Tax(Appeals)-5, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-5/ITO.Wd.5(1)(5)/387/2015-16 dated 23/11/2016 arising in the assessment order passed under s.143(3) r.w.s. 147 of the Income Tax

Act, 1961 (hereinafter referred to as "the Act") dated 24/02/2016 relevant to Assessment Year (AY) 2012-13.

2. At the outset, it was observed that the Ld. CIT(A) has dismissed the appeal filed by the assessee on the ground that the appeal was not maintainable as it was filed after the due date as specified under the provision of law. However, the Ld. AR before us prayed to remit the issue to the file of Ld. CIT(A) for fresh adjudication on merits in view of the order of this Tribunal in the case of Laxmanbhai Jivrajbhai Patel vs. DCIT in ITA No.2720/Ahd/2016, wherein, it was held as under:

*“4. Learned representatives fairly agree that the matter should be remitted to the file of the CIT(A) for fresh adjudication on merits, as, in any event, we are satisfied about the bonafides of delay in filing e-appeal. In this view of the matter, learned counsel's arguments pointing out that the mechanism of e-filing does not have the sanction of the statute, and that, in any event, prescription of Income-tax Rules cannot exceed the framework of the Income-tax Act, need not be adjudicated upon.*

*The matter stands restored to the file of the CIT(A) with our direction to dispose of the matter on merits, after giving a reasonable opportunity of hearing to the assessee, by way of a speaking order and in accordance with the law. We order so.”*

3. On the other hand, Ld. DR has no objection if the issue is remitted back to the file of the AO for fresh adjudication in accordance with the provision of law. The facts of the case on hand are exactly identical to the case of *Laxmanbhai Jivrajbhai Patel (supra)*, thus in view of above, we restore the matter to the file of the Ld. CIT(A) for fresh adjudication on

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merits in accordance to the provisions of law. Thus, the ground of appeal raised by the assessee is allowed for statistical purpose.

4. In the result, appeal of the assessee is allowed for statistical purpose.

<b>This Order pronounced in Open Court on</b>	<b>31/05/2018</b>
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Sd/-  
(राजपाल यादव)  
न्यायिक सदस्य  
(RAJPAL YADAV)  
JUDICIAL MEMBER

Ahmedabad; Dated 31/05/2018

*Priti Yadav, Sr.PS*

Sd/-  
(वसीम अहमद)  
लेखा सदस्य  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-5, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad